

DENNIS K. BURKE
United States Attorney
District of Arizona

ANNE W. DURNING
Special Assistant United States Attorney
Bar No. 009966
4041 N. Central Ave., STE 112
M/S 2200PX
Phoenix, AZ 85012-5000
Telephone: (602) 636-9600

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 13
)
GREGORY ANTHONY EVANS,) Case No. 2:11-bk-03734-SSC
SSN: XXX-XX-8887, and)
)
ROXANE RANEE EVANS,)
SSN: XXX-XX-9146,)
)
)
Debtors.)
)

**OBJECTION OF THE UNITED STATES TO
CONFIRMATION OF CHAPTER 13 PLAN**

Creditor United States of America (IRS), by and through the undersigned Special Assistant United States Attorney for the District of Arizona, hereby files its objection to the debtors' proposed Chapter 13 Plan, in support of which it is shown unto the Court as follows:

1. The debtors have an outstanding tax liability as reflected on the IRS Proof of Claim, a copy of which is attached hereto as Exhibit A.

1 2. The tax liability has been estimated by the IRS because
2 the debtors have failed to a file federal tax return for the
3 following period:

<u>Periods</u>	<u>Type of Returns</u>
3/31/2005	Form 941
6/30/2005	Form 941
9/30/2005	Form 941
12/31/2005	Form 941
3/31/2006	Form 941
6/30/2006	Form 941
9/30/2006	Form 941
12/31/2006	Form 941
3/31/2007	Form 941
6/30/2007	Form 941
9/30/2007	Form 941
12/31/2007	Form 941
3/31/2008	Form 941
6/30/2008	Form 941
9/30/2008	Form 941
12/31/2008	Form 941
3/31/2009	Form 941
6/30/2009	Form 941
9/30/2009	Form 941
12/31/2009	Form 941
3/31/2010	Form 941
6/30/2010	Form 941
9/30/2010	Form 941
12/31/2010	Form 941
3/31/2011	Form 941
2009	Form 1040
2010	Form 1040

20 3. Because the debtors' tax returns are unfiled, the Court
21 is unable to confirm this plan under the provisions of 11 U.S.C.
22 §§ 1308 and 1325(a)(9).

23 4. Once the above-mentioned tax liabilities have been
24 determined, the IRS will be able to ascertain if further
25 objections to this plan are warranted.

26 5. Debtors' plan fails to provide for the IRS secured tax
27 claim to the extent of the debtors' equity in real and personal
28

1 property. From a review of debtors' schedules, they have equity
2 in property to satisfy the IRS secured claim in a greater amount
3 than the plan provides. 11 U.S.C. § 506(a).

4 6. The rate of interest on the IRS secured claim should be
5 the statutory rate under I.R.C. § 6621 in effect during the month
6 the plan is confirmed. 11 U.S.C. § 511.

7
8 7. Debtors' plan fails to provide for full payment of all
9 periods of the IRS priority tax claim as required under the
10 provisions of 11 U.S.C. § 1322(a)(2).

11 8. The IRS is not required to release its lien on non-
12 dischargeable tax liabilities. In addition, the IRS is not
13 required to release its lien on dischargeable tax liabilities
14 until the earlier of payment of the underlying debt as determined
15 by nonbankruptcy law or a discharge under section 1328.
16 11 U.S.C. § 1325(a)(5)(B)(i)(1).

17 9. If the debtors' property remains property of the estate
18 after confirmation as the plan provides, the debtors are not
19 permitted to sell, lease, or encumber any property without Court
20 authorization in accordance with 11 U.S.C. § 363, and any order
21 confirming the plan should caution the debtors in this regard.

22 10. Debtors' schedules indicate that they have an
23 insufficient amount of disposable income with which to fund the
24 plan; therefore, the plan is not feasible.

25 11. Debtors' schedules indicate that they are self-
26 employed; however, debtors' budget fails to provide for estimated
27 tax payments.
28

1 12. Debtors do not qualify as Chapter 13 debtors under
2 11 U.S.C. § 109(e). Debtors unsecured debts exceed the
3 limitation established for unsecured debts.

4 13. For the reasons stated above, the proposed plan cannot
5 be confirmed.

6 WHEREFORE, it is prayed that the Court sustain this
7 objection and deny confirmation of the debtors' proposed
8 Chapter 13 Plan.

9 DATED this 29th day of March, 2011.

10 DENNIS K. BURKE
11 United States Attorney
12 District of Arizona

12 By: /S/ ANNE W. DURNING #009966
13 ANNE W. DURNING
14 Special Assist. U.S. Attorney

14 For information concerning this
15 case, please contact Paralegal
16 Connie M. Willis I.D. No.
 359841 of our office at (602)
 636-9627.

17 A copy of the foregoing mailed this
18 29th day of March, 2011 to:

19 JOSEPH C. MCDANIEL
20 Attorney for Debtors
21 JOSEPH C. MCDANIEL, PC
22 6245 N. 24TH Parkway, Ste. 112
23 Phoenix, AZ 85016

22 RUSSELL BROWN
23 Chapter 13 Trustee
24 Suite 800
25 3838 North Central Avenue
26 Phoenix, AZ 85012-1965

25 /S/ CINDY L. HOVE
26 Cindy L. Hove
27 Legal Assistant
28